

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:15-CV-403-RJC-DSC**

ALBERT YALE et. al.,)
)
Plaintiffs,)
)
v.)
)
COMMUNITYONE BANK N.A.,)
)
)
Defendant.)

MEMORANDUM AND RECOMMENDATION

THIS MATTER is before the Court on Defendant “CommunityOne Bank, N.A.’s Motion for an Order to Show Cause” (document # 68) and “Brief in Support ...” (document #69), both filed March 1, 2018. Defendant seeks an order directing Plaintiff CCR Data Systems (“CCR Data”) and its counsel Jonathan Andres to appear and show cause why they should not be held in contempt for refusing to comply with this Court’s January 25, 2018 “Memorandum and Order” (document #61) and for entry of appropriate sanctions. CCR Data and Andres have not responded to the Motion and the time for filing a responsive brief has expired.

This Motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b) and is now ripe for disposition. The Court has carefully considered the record, the arguments and the applicable authorities. For the reasons stated in Defendant’s brief, the Court respectfully recommends that the Motion be granted as set forth below.

On January 25, 2018, this Court entered a “Memorandum and Order” (document #61) sanctioning Plaintiff CCR Data and its counsel Jonathan Andres for failing to appear at the

properly noticed deposition of CCR Data. The Court ordered Andres and CCR Data to reimburse CommunityOne in the amount of \$6,068.94 by February 4, 2018. Andres and CCR Data have not paid as they were ordered to do.

After the deadline for payment passed, Defense counsel inquired twice of Andres as to when he and CCR Data would comply with the Court's Order and received no response.

On March 1, 2018, Defendant filed its Motion for an Order to Show Cause. Andres and CCR Data have not responded to the Motion.

Consequently, the undersigned respectfully recommends that Andres and CCR Data be ordered to show cause why they should not be held in contempt for violation of the Court's Order (document #61) and be subject to sanctions.

RECOMMENDATION

FOR THE FOREGOING REASONS, the undersigned respectfully recommends that Defendant "CommunityOne Bank, N.A.'s Motion for an Order to Show Cause" (document # 68) be **GRANTED**, and that the District Judge order Plaintiff CCR Data Systems and its counsel Jonathan Andres show cause why they should not be held in contempt for violation of the Court's "Memorandum and Order" (document #61) and be subject to sanctions.

NOTICE OF APPEAL RIGHTS

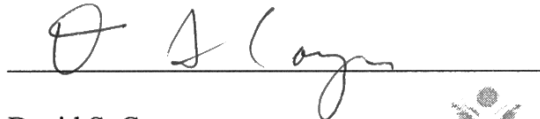
The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(c), written objections to this Memorandum and Recommendation must be filed within fourteen days after service of same. Failure to file objections with the Court constitutes a waiver of the right to de novo review by the District Judge. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997); Snyder v. Ridenour, 889 F.2d 1363, 1365 (4th

Cir. 1989). Moreover, failure to file timely objections will also preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140, 147 (1985); Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Wells, 109 F.3d at 201; Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is directed to send copies of this Memorandum and Recommendation to counsel for the parties; and to the Honorable Robert J. Conrad, Jr..

SO RECOMMENDED AND ORDERED.

Signed: March 20, 2018

A handwritten signature in cursive script, appearing to read "D S Cayer", is written over a horizontal line.

David S. Cayer
United States Magistrate Judge

